Remarks

Claims 1-22 are pending in the present application. No additional claims fee is due.

Response to the Office Action

The Rejection under 35 U.S.C. 103(a) over Genet et al.

Claims 11-22 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Genet et al (WO 99/48856 – hereinafter, "Genet"). Applicants respectfully traverse this rejection, as the Genet reference does not establish a *prima facie* case of obviousness. Specifically, Genet does not suggest or motivate one to modify the reference, as required under MPEP 2143.01. Applicants' invention is directed toward new orange couplers for use in oxidative hair dyeing compositions and systems. Genet's examples teach only the formation of blue colored dyes. Genet does not suggest that the reference can be modified in order to provide an orange color to hair, as described by the Applicants. Hence, one skilled in the art would not be motivated to look to Genet's reference, teaching only blue dyes, in order to form orange dyes. Therefore, a *prima facie* case of obviousness has not been established.

Genet describes oxidative dyeing compositions containing a cationic coupler. While the couplers of the present invention are also cationic, the present invention differs from that of Genet because the structure taught in Genet is two amino functional groups on a benzene ring. The structure of the present invention is a benzene ring with one hydroxy group and one amino functional group. Thus, the cationic coupler of the present invention provides for different colors than those taught in Genet. Genet teaches a polyphenyldiamine, which gives a blue color in the presence of developers; all of the examples in the Genet compositions provide for a blue color in the presence of developers. The couplers of the present invention produce an orange color in the presence of developers. Unlike other couplers commonly used to color hair orange, such as 5-amino-2-methylphenol, the coupler of the present invention provides good wash fastness, improving the wearability of orange color so that hair does not undergo the significant changes on exposure to light or shampooing, as can occur with other couplers. Hence, the present invention provides an improvement over the current practice of coloring hair orange.

The Office Action states that a prima facie case of obviousness has been established because a person of ordinary skill in the art would have the reasonable expectation that the species of the genus alkyl meta aminophenol, as taught by Genet, would obtain similar coloration when used in the dyeing composition and would expect such a composition to have similar properties to those claimed. However, obviousness can only be established by modifying the teachings of the

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prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found explicitly or implicitly in the reference. "The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art." *In re Kotzab*, 217 F.3d 1365, 1370 (Fed. Cir. 2000). Genet never explicitly or implicitly suggests that their invention can be modified in order to create the new orange couplers of the present invention. Thus, a *prima facie* case of obviousness has not been established.

Conclusion

Applicants have made an earnest effort to distinguish the invention as now claimed from the applied references. WHEREFORE, Applicants respectfully request reconsideration of this application and allowance of Claims 1-22.

Respectfully submitted,
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